

30 SEP 2003



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In re Application of :
Ahn et al. :
Application No.: 10/030,736 :
PCT No.: PCT/KR00/00461 :
Int. Filing Date: 15 May 2000 : DECISION
Priority Date: 13 July 1999 :
Attorney Docket No.: SAM01830 :
For: Herb Medicine Composition To Be :
Spread On Sanitary Napkin For Female :

This is in response to applicant's "Response To Notification Of Defective Response" filed on 03 September 2002, which is being treated as a petition under 37 CFR 1.181.

BACKGROUND

This international application was filed on 15 May 2000 and claimed an earlier priority date of 13 July 1999. The International Bureau transmitted a copy of the published international application to the USPTO on 18 January 2001. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Consequently, the 30 month period for payment of the basic national fee in the United States expired as of midnight on 13 January 2002. On 09 January 2002, applicant filed *inter alia* the basic national fee.

On 20 March 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant, requiring the submission of an executed oath or declaration and a surcharge under 37 CFR 1.492(e).

On 31 May 2002, applicant filed a "Response To Notice To File Missing Parts Of Application" including an executed declaration of the inventors and a surcharge under 37 CFR 1.492(e).

On 06 August 2002, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed to applicants, indicating that the surcharge under 37 CFR 1.492(e) had not been filed and requiring its submission.

Applicant filed the instant response on 03 September 2002.

DISCUSSION

The petition is accompanied by a copy of a return postcard receipt which is stamped as received by "OIPE" on "MAY 31 2002" and which itemizes *inter alia* a "Check number 3999

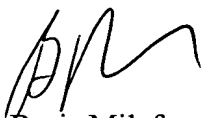
in the amount of \$130.00." The petition is also accompanied by a copy of a canceled check number 3999 in the amount of \$130.00, and states that said copy is "a copy of the canceled check" filed on 31 May 2002." MPEP 503 states in part that "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, the copy of the check filed with the petition on 03 September 2002 is accepted establishing receipt of the \$130.00 surcharge on 31 May 2002. As the surcharge was filed before the mailing of the Notification of Defective Response on 06 August 2002, the mailing of that Notification was inappropriate and it is hereby **VACATED**.

Further review of the record reveals that the Transmittal Letter filed on 09 January 2002 includes an assertion of small entity status, but applicant paid a large entity basic national fee. Therefore, applicant is entitled a refund of \$520.00 of the basic national fee. Furthermore, the \$980.00 extension of time fee charged on 21 October 2002 was inappropriate. Accordingly, these funds will be refunded to applicant.

DECISION

The petition is **GRANTED** as discussed above.

The application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing. The date of this application under 35 U.S.C. 371(c)(1), (2) and (4) is **31 May 2002**.



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